

Human Rights Council

Complaint Procedure Form

- You are kindly requested to submit your complaint in writing in one of the six official UN languages (Arabic, Chinese, English, French, Russian and Spanish) and to use these languages in any future correspondence;
- Anonymous complaints are not admissible;
- It is recommended that your complaint does not exceed eight pages, excluding enclosures.
- You are kindly requested not to use abusive or insulting language.

I. Information concerning the author (s) of the communication or the alleged victim (s) if other than the author

Individual Group of individuals NGO Other

Last name: Hoshino

First name(s): Akiko

Nationality: Japan

Address for correspondence on this complaint:

Hoshino Defence Committee

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Submitting the complaint:

On the author's own behalf:

On behalf of other persons: (Please specify: Husband of the author)

II. Information on the State concerned

Name of the State concerned and, as applicable, name of public authorities responsible for the alleged violation(s):

Japan

III. Facts of the complaint and nature of the alleged violation(s)

The complaint procedure addresses consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

Please detail, in chronological order, the facts and circumstances of the alleged violations including dates, places and alleged perpetrators and how you consider that the facts and circumstances described violate your rights or that of the concerned person(s).

Fumiaki Hoshino, my husband, has been suffering from gross human rights violations in Tokushima Prison, Japan, which would be of great concern to the UNHRC, the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Working Group on Arbitrary Detention.

1 Gross violations of human rights in Japanese prison

Fumiaki Hoshino has been behind bars on a framed-up charge for 43 years and seven months, of which 31 years and seven months in Tokushima Prison.

He has consistently maintained his innocence for about 44 years since his arrest on August 6, 1975.

In November 1971, the government banned demonstrations against ratification of fraudulent Okinawa Reversion Agreement. Hoshino, however, led a contingent of demonstrators and later arrested and indicted for “murder, arson of inhabited buildings, obstructing executive officers, injury, and unlawful assembly with weapons.”

On August 21, 1979, the 7th criminal division of the Tokyo District Court sentenced him to 20 years imprisonment; both the defendant and the prosecution appealed to the Tokyo High Court.

On July 13, 1983, the 11th criminal division of the Tokyo High Court imposed Hoshino even harsher punishment—indefinite imprisonment.

On July 17, 1987, the 2nd petty bench of the Supreme Court—the final instance—denied Hoshino’s appeal.

On October 30 of the same year, Hoshino was transferred to Tokushima Prison, where he has been languishing for 31 years and 5 months.

This complaint presents inhumane treatment of Hoshino: including extremely long detention—about 32 years as indefinite term prisoner, 44 years including pre-sentencing detention—and arbitrary disciplinary punishments and rampant gross human rights violations in Japanese prison system which amount sometime to torture.

2 Turning indefinite imprisonment into de facto life imprisonment is inhumane

(1) Facts on turning indefinite imprisonment into de facto life imprisonment

During the time period of 2008-2017, very few indefinite term prisoners were paroled—10 inmates in 2013, 7 in 2014, 11 in 2015, 9 in 2016 and 11 in 2017—out of about 1,800 indefinite inmates, which remained almost constant according to a report from the Department of Justice.

As of the end of the year 2017, 1,398 indefinite inmates out of 1,795, about 80%, had been in prison for 10 years or more. 209 inmates including Hoshino for 30 to 40 years, 34 for 40 to 50 years, and 11 for more than 50 years in prison.

In consequence, more and more indefinite inmates die in correctional facilities; the deaths increased from 7 in 2008 to 30 in 2017. In recent 10 years, there 193 indefinite inmates died in prison. This number is 2.3 times bigger than that of paroled inmates, 84.

These facts clearly indicate that the parole system is arbitrary run, Article 28 of the Penal Code (“When a person sentenced to imprisonment with or without work evinces signs of substantial reformation, the person may be paroled by a disposition of a government agency after that person has served one-third of the definite term sentenced or 10 years in the case of a life imprisonment* ”) is ignored, and the indefinite imprisonment is turned into de facto life imprisonment, and Article 36 of Japanese Constitution (“The infliction of torture by any public officer and cruel punishments are absolutely forbidden”) is violated

* The government’s law translation website
(<http://www.japaneselawtranslation.go.jp/law/detail/?id=1960&re=02&vm=04>)
erroneously uses “life imprisonment” instead of “indefinite term imprisonment” to express Japanese “mu ki cho eki” system stipulated under Japanese Penal Code. “mu” means “non-existent” or “nothing.” “ki” means “term” or “duration,” and “cho eki” is “imprisonment with labor” or simply put “imprisonment.”

(2) “Special indefinite imprisonment”

In 1998, the Supreme Public Prosecutors Office issued unlawful “Special Circular Notice” which created the concept of “special indefinite imprisonment” and a new kind of criminal punishment without legislation. Prosecutors were recommended to vehemently oppose to parole for “special” prisoners, meaning those with political background like Fumiaki Hoshino. Regional parole boards accepted the opinions of the prosecution which resulted in imposition of de facto life imprisonment.

It must not be allowed that the prosecutors’ office arbitrarily change the court decision by a mere circular notice. However, the “Special Circular Notice,” made an extra-judicial alteration of indefinite imprisonment; the number of paroled cases plummeted.

(3) Hoshino’s 44-year imprisonment constitutes torture and cruel punishment

Fumiaki Hoshino has never lost his human pride despite long and harsh imprisonment—deprivation of all liberty in Tokushima Prison for 31 years and 7 months (as of March 2019) since October 30, 1987, freezing cold in winter and extreme heat in summer, with inhumane treatment by the prison authority. He will be 73 years old in April 2019.

It cannot be denied that the criminal punishment includes an element of retribution. However, the primary purpose of it must be correction and rehabilitation. There are no “born criminal.” Bitter experiences of social discrimination, inequality, poverty, or other difficulties—education, family background etc. drive them to commit unlawful deeds.

Therefore, correction by educational and other measures is quite possible. Prisoners can become more able to live a socially acceptable life. That must be the purpose of punishment administration.

Fundamentally, prisoner treatment in correctional facilities has to meet such purposes, rehabilitation or re-integration into society. Once the conditions are set up, parole has to be allowed.

Hoshino's attitude toward the prison life has been excellent. He has enough conditions for parole, having housing to live. Nevertheless, he has not yet been granted parole even after 44 year-long detention, of which 31 years and 7 months as an indefinite inmate. It is nothing short of deliberate retribution by the state, nothing short of "cruel punishment" forbidden under the Constitution.

Years and years, in freezing winter and boiling summer, under unconditional obedience to prison guards, deprivation of all human liberty makes parole the immeasurable hope for indefinite prisoners. The introduction of de facto life imprisonment, detention up until the death, destroys such invaluable hope. It rips out human dignity from prisoners.

3 Lack of transparency in parole procedure / lack of stipulated right to parole

(1) Lack of transparency

Prisoners cannot file complaint against denial ruling of the regional parole board, because the prisoner has no legal right to parole and its procedure and parole inquiry is run at the discretion of the regional parole board. No reason is given for the non-admission of parole.

Steps in the inquiry procedure are not specifically stipulated in the law. The prisoner can know nothing about the parole inquiry—names of board members who participate in the inquiry, date of the first inquiry, progress of the procedure, contents of it. When the board decides to make visitation, it send a board member to the prison without advance notice.

One cannot know whether hearing from the victim or the prosecutor takes place or not, and if any, the contents of the hearing; the prisoner cannot to refute it.

We, Fumiaki Hoshino's family and his counsel made 13 visits so far to the Shikoku Regional Parole Board and posed every time questions mentioned above; the Board, however, never gave a relevant answer.

(2) No stipulated right to parole procedure for prisoners

As mentioned above, a prisoner and his/her family have no stipulated right to file an application for parole; only the prison warden can file the application. Under the notice of the Ministry of Justice, the parole inquiry became mandatory after 30 years' imprisonment of indefinite inmate. However, this mandatory parole inquiry is not legislated obligation; it is a mere administrative measure. After the end of the first round of inquiry for 30-year imprisoned inmate, the second round begins 10 years later, that is after 40 years of imprisonment, unless the warden recommends otherwise.

The criterion and procedure of application for parole are not stipulated in the law; they are left to the warden's discretion.

Also lawyers or other agents of prisoners cannot participate in the parole inquiry.

The "victim's desire for revenge" and "feelings in the society at large" must not be used as counter-argument against parole. It is incompatible with the fundamental purpose of the parole system—correction, rehabilitation and decrease of recidivism.

In sum, the criterion and procedure for parole are not stipulated in the law; objectivity and fairness of parole ruling are not guaranteed. Parole is just given as a gift from the government.

4 Inhumane arbitrary punishment

(1) Disciplinary punishment against Hoshino

Fumiaki Hoshino was punished during 32 years of his prison life as follows:

- i. February 1989, one week of "minor solitary confinement"

Hoshino's prison labor at that time was making plastic flowers. One day he warmed plastic material with a kettle in his bed in order to prevent it go brittle in freezing room. The prison authority caught him and imposed a punishment called "Keiheikin" ("Minor solitary confinement")**.

** Keiheikin is a torture, not a minor punishment, as explained below.

- ii. From August 15 through 23, 1990, "minor solitary confinement"

The prison authority imposed him "minor solitary confinement" because he washed his towel, with which he wiped his feet got dirty during the exercise without socks.

- iii. November 1996, 20 days of "minor solitary confinement"

"Minor solitary confinement" was imposed because he washed his foot after he inadvertently stepped on a cockroach in his cell.

- iv. March 2010, "admonition"

On March 26 of the same year, Tatsuo Suzuki, Hoshino's attorney, visited him and informed that the Tokyo High Court had instructed the deadline of opinion letter on retrial: March 31. Therefore, on Sunday February 28, he spent a whole day in writing his opinion letter. After the lights-out, he corrected one line; it was the "reason" for the admonition.

- v. March 2010, one week of "disciplinary confinement"

“Heikyo batsu” (“disciplinary confinement”) ^{††} was imposed because he had put zenzai (hot sweet Japanese soup) in his case for artificial tooth in order to cool it down.

^{††}“disciplinary confinement” is substantially same for prisoners as “minor solitary confinement”. See below.

vi. April 2011, demotion from the third privilege grade^{†††} to the fourth, because of accumulation of two yellow cards as follows:

- During the work time, Hoshino, spoken to by a prisoner, asked him; “do you have a permit to talk to me?” The authority ruled Hoshino’s word as “irregular conversation.”
- After the authority had changed his cell, he stood on the table in order to clean up the cell.

^{†††}privileges are given to inmates “in accordance with a periodic assessment of their attitudes toward the punishment” “(i)n order to evoke sentenced persons’ willingness for reformation and rehabilitation.”

vii. On May 8, 2018, three punishments:

- Handing back of 500 Yen cash reward
- Handing back of one of 4 pins each of which honored his 3-year no accident record.
- Demotion from the second privilege grade to the third

On the national holiday of May 3, he overlooked the notice that instructed the sweet stuff must be eaten before the supper and consumed it one hour after. It was ruled “irregular consumption.”

(2) Torture or inhumane treatment

Any of Hoshino’s acts mentioned above were not blamed on the ground of defiance against prison guards, any trouble between prisoners or disruption of order and operation of the prison. All of his acts might be done by very ordinary people in daily life.

It is quite clear that none of such acts came from intentional defiance.

Both of “Keiheikin” (“minor solitary confinement”) and “Heikyo batsu” constitute tortures or inhumane treatment.

For a prisoner, “Keiheikin” and “Heikyo batsu” are the same punishment. The former was stipulated in the Prison Act and the latter in the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees, the successor law of the Prison Act.

Under “Keiheikin” and “Heikyo batsu”, the inmate confined in a punishment cell must sit on the hard floor with legs bent (seiza), facing straight toward the door, eyes open, without changing such position all day long, except during the eating times and toilet times. Visitation, outdoor exercise, receiving and sending of letters and reading books are all prohibited.

Treatment of inmates must be done in order that they regain their pride and self-confidence as human being and motivate their social rehabilitation. Treatment for their social re-integration is promoted by guarantee of their human rights and cooperation with the society at large. It cannot be done by threat, coercion and mere formality forced by disciplinary punishment on charge of “violation of regulations.”

(3) Arbitrary punishment

The privilege grade system is used by the prison authority to control inmates, giving some incentives: privileged measures on visitation, frequency in receiving and sending of letters and so on. This privilege grade, along with the number of disciplinary punishment of the inmate greatly affect the decision of his/her parole.

We believe that the prison authority has arbitrarily been continuing punishment of Hoshino in order to harass him and obstruct his parole.

For the first time since 1990, Hoshino was punished in August 1996. It was just four months after his application for retrial and just before his anticipated promotion to the second grade. He was demoted to the fourth grade. That was his third disciplinary punishment in his prison life.

For the first time since 1996, he was punished in March 2010: admonition and disciplinary confinement. It resulted in his demotion from the third grade to the fourth grade and deprivation of two 3-year-no-accident pins out of four.

Eight years after his 4th and 5th disciplinary punishments above, and just before the start of expected mandatory parole procedure for Hoshino who had experienced nearly 30 years of prison life, he was demoted from the second grade to third and taken one 3-year-no-accident pin out of four. It was meant to directly influence the parole inquiry.

Disciplinary punishments constitute torture, which outrageously violate human rights. The deliberate imposition of such punishment for the purpose of obstruction of parole is all the more cruel and inhumane.

4 Conclusion

Hoshino is trusted by other inmates as well as prison guards. Tokushima Prison’s new leather bag project launched February last year was entrusted to him. His bag got the outstanding performance award in the Shikoku District, an excellent accomplishment despite the lack of sewing machine for very hard materials—ballistic nylon and leather.

He paints a watercolor of children’s smiling faces around the world, of landscapes in Okinawa and portraits there, of Fukushima after the nuclear accident, of his home province, Hokkaido, using photographs and his active imagination. He is one of the best awardees in the annual painting competition of the Shikoku District. Many people were moved by the Hoshino painting exhibitions held all around Japan.

In June last year, 1,000 people marched through Takamatsu City for Hoshino’s freedom. 650 repeated the march in November. On January 27 this year, 720 people held a rally and march. Our full-page opinion ads were posted on Asahi Newspaper and Shikoku Newspaper last year and this year on Okinawa Times and Ryukyu Shimpo.

For 32 years, Hoshino has survived his prison life proudly, annoying nobody. The society wants his freedom.

I married Fumiaki Hoshino in 1986 when he was already behind bars. My monthly visit to Tokushima Prison and Fumiaki's new residence prepared by his brothers and myself present adequate and enough conditions of parole. Japanese government and its Ministry of Justice must free Hoshino from 44 years of prolonged detention, cruel punishment. They must stop all torturous treatment of indefinite term and other inmates. Human rights and freedom must be retrieved.

IV. Exhaustion of domestic remedies

1- Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies– please provide details on the procedures which have been pursued, including recourse to the courts and other public authorities as well as national human rights institutions^{*}, the claims made, at which times, and what the outcome was:

(1) He has been seeking overturn of his guilty conviction and the sentence to indefinite imprisonment, repeatedly filing application for retrial

Apr. 17, 1996 Submission of retrial application to the Tokyo High Court

Feb. 22, 2000 Retrial application denied; petition of objection by Hoshino

Jan. 19, 2004 Petition of objection denied; special complaint by Hoshino

Jul. 14, 2008 Special complaint denied

Nov. 27, 2009 Submission of the second retrial application

Mar. 30, 2012 Second retrial application denied; petition of objection by Hoshino

(2) On November 14, 2011, we sued the government demanding state compensation for illegal black out of my letters to Fumiaki and denial of my and Fumiaki's friends' visitation.

Jul. 18, 2014 The District Court ruled that the black out and denial of my visitation had been illegal.

Sept. 16, 2015 The Tokyo High Court overturned the lower court ruling.

2- If domestic remedies have not been exhausted on grounds that their application would be ineffective or unreasonably prolonged, please explain the reasons in detail:

^{*} National human rights institutions, established and operating under the Principles Relating to the Status of National Institutions (the Paris Principles), in particular in regard to quasi-judicial competence, may serve as effective means of addressing individual human rights violations.

In every procedure for retrial, the prosecution refused disclosure of third-party eyewitnesses' statements, which can fix false charge on Hoshino. The court has failed to hold trilateral talks between the court, the prosecution and Hoshino's attorneys and avoided recommending the prosecution to disclose evidence. The police "lost" the video tape which had been used for the final guilty sentence.

The Japanese justice system is far from reliable for people who seek retrial and efficient remedies.

V. Submission of communication to other human rights bodies

1- Have you already submitted the same matter to a special procedure, a treaty body or other United Nations or similar regional complaint procedures in the field of human rights?

In 1996, I wrote a letter about the disciplinary punishment of Fumiaki Hoshino for washing his foot after stepping on a cockroach and sent it to the Amnesty International's headquarters in London.

2- If so, detail which procedure has been, or is being pursued, which claims have been made, at which times, and the current status of the complaint before this body:

Mr. Pierre Robert, the then researcher of AI on Asia Pacific Region responded via FAX, that he wanted more detailed information in order to send recommendation to the Japanese government about the disciplinary punishment which constituted serious human rights violation.

In May 1997, the human rights investigation team from AI in London heard about Hoshino's case from Tatsuo Suzuki, his defence attorney, and me.

In June 1998, Mr Mark Allison told at a news conference to launch AI's new report, *Abusive Punishments in Japanese Prisons*; "these punishments constitute cruel, inhuman and degrading treatment," and "violate International Covenants on Human Rights and other international norms of human rights." He urged that the Japanese government ratify the UN Convention against Torture, disclose information about correctional facilities and allow NGOs' on-the-spot investigation, and legislate for clarification of issues on "protection cells" (hogobo) and leather handcuffs and so on.

In December 2000, AI's international newsletter, *Japan: No advance on human rights*, posted words of AI's International's Secretary General Pierre Sane and reported results of AI's investigation on torture, abuses and other concerns in Japanese detention facilities, including Hoshino's case.

Amnesty International's publication mentioned above:

Abusive Punishments in Japanese Prisons
<https://www.amnesty.org/download/Documents/152000/asa220041998en.pdf>

Amnesty International Annual Report 1998 p. 215
<https://www.amnesty.org/download/Documents/POL1000011998ENGLISH.PDF>

Japan: No advance on human rights, <https://www.amnesty.org/en/documents/ASA22/009/2000/en/>

VI. Request for confidentiality

In case the communication complies with the admissibility criteria set forth in Council resolution 5/1, kindly note that it will be transmitted to the State concerned so as to obtain the views of the latter on the allegations of violations.

Please state whether you would like your identity or any specific information contained in the complaint to be kept confidential.

Request for confidentiality (*Please tick as appropriate*): Yes No

Please indicate which information you would like to be kept confidential

Date:

Signature:

N.B. The blanks under the various sections of this form indicate where your responses are required. You should take as much space as you need to set out your responses. Your complaint should not exceed eight pages.

VII. Checklist of supporting documents

Please provide copies (not original) of supporting documents (kindly note that these documents will not be returned) in one of the six UN official languages.

- Decisions of domestic courts and authorities on the claim made (a copy of the relevant national legislation is also helpful):
- Complaints sent to any other procedure mentioned in section V (and any decisions taken under that procedure):
- Any other evidence or supporting documents deemed necessary:

VIII. Where to send your communications?

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